

5
No. 87-1318

Supreme Court, U.S.
FILED
MAY 11 1988

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1987

VOLT INFORMATION SCIENCES, INC.,
Appellant,

vs.

BOARD OF TRUSTEES OF LELAND STANFORD
JUNIOR UNIVERSITY, Appellee.

ON APPEAL FROM THE
COURT OF APPEAL OF CALIFORNIA
SIXTH APPELLATE DISTRICT

JOINT APPENDIX

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JURISDICTIONAL STATEMENT FILED FEBRUARY 8, 1988
JURISDICTION POSTPONED MARCH 28, 1988

5987

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DOCKET ENTRIES
FROM THE COURTS BELOW

DOCKET ENTRIES FROM
THE CALIFORNIA SUPERIOR COURT

The clerk of the California Superior Court for Santa Clara County does not maintain lists of docket entries. The following list of relevant docket entries prepared by counsel is provided in its stead:

September 4, 1986 - Complaint filed by plaintiff Board of Trustees of Leland Stanford Junior University.

October 7, 1986 - Petition to Compel Arbitration and Stay Action filed by defendant Volt Information Sciences, Inc.

November 21, 1986 - Order filed by court denying petition to compel arbitration

December 5, 1986 - Notice of Appeal filed by defendant

DOCKET ENTRIES FROM THE
CALIFORNIA COURT OF APPEAL

December 15, 1986 - Notice of appeal received

February 17, 1987 - Record on appeal filed

February 19, 1987 - Appellant's Opening Brief filed by appellant

February 26, 1987 - Joint Appendix filed

March 9, 1987 - Motion to expedite appeal filed by appellant

April 6, 1987 - Order granting motion to expedite appeal filed by court

April 6, 1987 - Respondent's Brief filed by respondent

May 22, 1987 - Appellant's Reply Brief filed by appellant

July 16, 1987 - Cause argued and submitted

October 5, 1987 - Opinion filed by the court (affd. 1, 2; 3 disntd.)

November 12, 1987 - Appellant's Petition for Review by Supreme Court received

November 25, 1987 - Application for leave to file amicus brief and amicus brief received

December 3, 1987 - Answer to Petition for Review received

December 18, 1987 - Petition for review denied by Supreme Court; reporter of decisions directed not to publish opinion

December 21, 1987 - Remittitur issued

December 22, 1987 - Record returned from clerk of Supreme Court

January 14, 1987 - Notice of Appeal to United States Supreme Court filed by appellant

February 17, 1987 - Notice of filing of appeal received from U.S. Supreme Court

DOCKET ENTRIES FROM THE
CALIFORNIA SUPREME COURT

November 12, 1987 - Petition for Review filed by
petitioner

November 25, 1987 - Application for Leave to
File Amicus Brief and Amicus Brief filed by
Associated General Contractors

December 2, 1987 - Answer to petition for Review
filed by respondent

December 17, 1987 - Petition denied; court of
appeal opinion decertified

STANFORD'S COMPLAINT
IN THE SUPERIOR COURT

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(ENDORSED)
F I L E D
SEP 4 1986
GRACE YAMAKAWA
County Clerk

Attorneys for Plaintiff
The Board of Trustees of The
Leland Stanford Junior University

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

THE BOARD OF TRUSTEES)	
OF THE LELAND STANFORD)	
JUNIOR UNIVERSITY, a	)	No. P 48603
body having corporate)	
powers,	)	COMPLAINT FOR DECLARA-
	)	TORY JUDGMENT; FRAUD;
Plaintiff,	)	ESTOPPEL; ENTERING
	)	INTO A CONTRACT WITH-
v.	)	OUT INTENT TO PERFORM;
	)	BREACH OF COVENANT OF
VOLT INFORMATION	)	GOOD FAITH AND FAIR
SCIENCES, INC., TELE-	)	DEALING; BAD FAITH
COMMUNICATIONS INTER-	)	DENIAL OF EXISTENCE
NATIONAL, INC., BRIAN-	)	OF A CONTRACT; AND
KANGAS-FOULK & ASSO-	)	<u>BREACH OF CONTRACT</u>
CIATES, and DOES I)	
through XX, inclusive,)	
)	
Defendants.)	
)	

The Board of Trustees of The Leland Stanford Junior University alleges as follows:

GENERAL ALLEGATIONS

1. The Board of Trustees of The Leland Stanford Junior University ("Stanford") is a body having corporate powers under the laws of the State of California. It is a nonprofit educational institution, and its principal campus and situs are at the Stanford campus, in the County of Santa Clara, California.

2. Defendant Volt Information Sciences, Inc. ("Volt") is a corporation organized and existing under the laws of the State of New York, with a principal place of business in the State of New York, authorized to do business and doing business in the State of California, County of Santa Clara.

3. Defendant Telecommunications International, Inc. ("TII") is a corporation organized and existing under the laws of the State of California, with a principal place of business in the State of Colorado, authorized to

do business. and doing business in the State of California, County of Santa Clara.

4. Defendant Brian-Kangas-Foulk and Associates ("BKF&A") is a corporation organized and existing under the laws of the State of California, with a principal place of business in the State of California, authorized to do business and doing business in the State of California, County of Santa Clara.

5. Stanford does not know the true names and capacities of defendants sued herein as Does I through XX, inclusive, and therefore sues these defendants by such fictitious names. Stanford will seek leave to amend this complaint to allege their true names and capacities when ascertained.

6. Stanford is informed and believes and on that basis alleges that at all times herein mentioned, each of the defendants including the fictitiously named defendants was the agent, servant or employee of each of the remaining defendants, and in doing the acts alleged in this complaint was acting within the

course and scope of such agency.

7. The transactions which are the subject of this Proceeding are to be carried out in the County of Santa Clara at the Stanford campus, which is within the Palo-Alto Mountain View-Los Altos Judicial District of the County of Santa Clara.

8. On or about July 10, 1984, Stanford and Volt entered into a Construction Contract ("Contract") in connection with the construction of a conduit distribution system ("the conduit distribution system") on the Stanford campus. A true and correct copy of portions of the Contract, including the Conditions of the Contract (General, Supplementary and other Conditions) is attached as Exhibit "A" and incorporated by reference.

9. On or about April 17, 1985, Stanford gave Volt written notice of termination ("Termination Notice") of the Contract for cause. A true and correct copy of the Termination Notice is attached as Exhibit "B" and incorporated by reference.

10. In or about April, 1985, subsequent to the sending of the Termination Notice, meetings and telephone conversations were held between representatives of Stanford and Volt. During the meetings and conversations, Volt representatives stated it was Volt's desire to complete the subject work and perform at Volt's sole expense all corrective work necessary to comply with the Contract.

11. On or about April 29, 1985, Stanford and Volt entered into a Reinstatement Agreement ("Agreement"). A true and correct copy of the Agreement is attached as Exhibit "C" and incorporated by reference.

12. On or about April 14, 1986, Volt presented to Stanford a Claim for Additional Compensation ("Claim") in the amount of \$3,916,190.65. On or about August 27, 1986, Volt presented to Stanford a demand for Arbitration ("Arbitration demand") for damages in the same amount. In both the Claim and Arbitration Demand Volt contends it is entitled

to additional compensation for work performed as to which Volt agreed in the Agreement it would not be paid. A true and correct copy of the Arbitration Demand is attached as Exhibit "D" and incorporated reference.

13. On or about March 11, 1983, Stanford and TII entered into a Consulting Contract ("TII Contract") in connection with the construction of the conduit distribution system. A true and correct copy of the TII Contract is attached as Exhibit "E" and incorporated by reference. The TII Contract provided that TII would furnish the design for the conduit distribution system. On or about April 25, 1983, TII and BKF&A entered into a sub-consultant contract ("TII-BKF&A Contract") which Provided that BKF&A would furnish the design for the conduit distribution system. A true and correct copy the TII-BKF&A Contract is attached as Exhibit "F" and corporated by reference.

14. On or about October 10, 1984, TII and Stanford entered into an Engineering

Consulting Contract ("TII Engineering Contract") which provided that TII would perform implementation, management and supervision in connection with the construction of the conduit distribution system. A true and correct copy of the TII Consulting Contract is attached as Exhibit "G" and incorporated by reference.

FIRST CAUSE OF ACTION AGAINST VOLT

DECLARATORY RELIEF

15. Stanford reasserts the allegations in paragraphs 1 through 12 of its General Allegations, and incorporates them by reference as though fully set forth.

16. An actual controversy exists among the parties concerning the Agreement and the amount due under the Contract as follows:

(a) Stanford contends that the Agreement is a binding contract that continues to govern the rights and obligations of the parties; Volt contends the Agreement is a nullity.

(b) Stanford contends that any sum allegedly due Volt was waived and released

by the Agreement and that Stanford is not indebted to Volt in any sum or sums whatever; Volt contends that Stanford is obligated to pay it the amount of \$3,916,190.65.

17. Stanford asks that this Court make its declaration determining the rights and obligations of the parties pursuant to the provisions of Section 1060, California Code of Civil Procedure. A determination of the rights of the parties will be in the interests of justice.

WHEREFORE, Stanford prays for judgment against Volt, as set forth below.

SECOND CAUSE OF ACTION AGAINST VOLT

FRAUD

18. Stanford reasserts the allegations in paragraphs 1 through 12 of its General Allegations, and incorporates them by reference as though fully set forth.

19. In the course of the meetings and telephone calls described in paragraph 10, above, and in the Agreement, Volt falsely and fraudulently represented to Stanford a material

fact, and made a promise about a material matter without any intention of performing it. More specifically, Volt represented and promised that, if Stanford reinstated Volt under the Contract and permitted Volt to complete the work it contracted to perform, Volt intended to and would perform, at its sole expense, all corrective work necessary to comply with the Contract.

20. The representation described in paragraph 19, above, was false and the promise described in paragraph 19, above, was made without any intention of performing it in that, at the time it made the representation, Volt had no intention to perform at its sole expense all corrective work necessary to comply with the Contract; instead, Volt intended to demand that Stanford reimburse it for the expenses of the corrective work necessary to comply with the Contract.

21. Volt knew when it made the representation and promise described in paragraph 19 above, that the representation was

false and the promise was made without any intention of performing it.

22. The representation and promise described in paragraph 19, above, were made by Volt with intention of defrauding Stanford and inducing it to believe that, if Stanford reinstated Volt under the Contract and permitted Volt to complete the work it contracted to perform, Volt intended to and would perform, at its sole expense, all corrective work necessary to comply with the Contract.

23. Volt made the representation and promise described in paragraph 19, above, in order to induce Stanford to reinstate Volt under the Contract and enter into the Agreement.

24. In reliance upon the representation and promise described in paragraph 19, above, Stanford entered into the Agreement and reinstated Volt under the contract. At the time it did so, Stanford was not aware that the representation was false or that Volt did not intend to perform its promise.

25. As a result of its reliance on

Volt's representation and promise described in paragraph 19, above, Stanford has been damaged in that it will be required to incur expenses, including attorneys' fees, to investigate and respond to legal claims made by Volt for compensation on account of work performed by Volt following April 17, 1986.

26. Volt's actions, described above, were taken with malice, oppression and fraud, as defined by California Civil Code Section 3294, entitling Stanford to exemplary damages.

WHEREFORE, Stanford prays for judgment against Volt, as set forth below.

THIRD CAUSE OF ACTION AGAINST VOLT

ESTOPPEL

27. Stanford reasserts the allegations in paragraphs 1 through 12 of its General Allegations, and in paragraphs 19 through 26, and incorporates them by reference as though fully set forth.

28. The fraudulent conduct alleged in paragraphs 19 through 26, above, has misled

Stanford to its prejudice. Stanford asks that the Court estop Volt from taking advantage of its own fraudulent conduct by repudiating the Agreement. Stanford asks that the Court give the Agreement full force and effect.

WHEREFORE, Stanford prays for judgment against Volt, as set forth below.

FOURTH CAUSE OF ACTION AGAINST VOLT
ENTERING INTO CONTRACT WITHOUT INTENT
TO PERFORM.

29. Stanford reasserts the allegations in paragraphs 1 through 12 of its General Allegations, and in paragraphs 19 through 26, and incorporates them by reference as though fully set forth.

30. Volt entered into the Agreement with Stanford without intent to perform its obligation under the Agreement to perform at its sole expense all corrective work necessary to comply with the Contract.

31. Volt has failed to perform its obligation to perform at its sole expense all corrective work necessary to comply with the Contract.

32. As a direct and proximate result of Volt's failure to perform its obligation, Stanford has been damaged in that it will be required to incur expenses, including attorneys' fees, to investigate and respond to legal claims made by Volt for compensation on account of work performed by Volt following April 17, 1986.

33. Volt's actions, described above, were taken with malice, oppression and fraud, as defined by California Civil Code Section 3294, entitling Stanford to exemplary damages.

WHEREFORE, Stanford prays for judgment against Volt, as set forth below.

FIFTH CAUSE OF ACTION AGAINST VOLT

BREACH OF COVENANT OF GOOD FAITH
AND FAIR DEALING, BAD FAITH DENIAL
OF EXISTENCE OF CONTRACT

34. Stanford reasserts the allegations in paragraphs 1 through 12 of its General Allegations, and in paragraphs 19 through 26, and incorporates them by reference as though fully set forth.

35. The Agreement included an implied covenant of good faith and fair dealing that

neither party would take any action which would deny the right of the other party to receive the benefits intended by that Agreement.

36. Stanford participated in the meetings and telephone conversations described in paragraph 10, above, in a good faith effort to reinstate Volt under the Contract, and relied upon the representation and promise described in paragraph 19, above, in entering the Agreement and reinstating Volt under the Contract.

37. Stanford has fulfilled the implied covenant of good faith and fair dealing by performing all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the Agreement.

38. By presenting to Stanford the Claim seeking, and demanding arbitration to recover, compensation on account of work performed by Volt following April 17, 1986, Volt has breached the implied covenant of good faith and fair dealing in the Agreement.

39. In an attempt to shield itself

from liability for its fraudulent conduct, Volt has denied, in bad faith and without probable cause, that the Agreement exists as a binding contract. By its bad faith denial of the existence of the Agreement, Volt has compelled Stanford to bring this action.

40. As a direct and proximate result of Volt's breach of the implied covenant of good faith and fair dealing and its denial of the existence of the Agreement, Stanford has been damaged in that it will be required to incur expenses, including attorneys' fees, to investigate and respond to legal claims made by Volt for compensation on account of work performed by Volt following April 17, 1986.

41. Volt's breach of the implied covenant of good faith and fair dealing and its bad faith denial of the existence of the Agreement were done with malice, oppression and fraud, as defined by California Civil Code Section 3294, entitling Stanford to exemplary damages.

WHEREFORE, Stanford prays for judgment

against Volt, as set forth below.

SIXTH CAUSE OF ACTION AGAINST VOLT

BREACH OF CONTRACT

42. Stanford reasserts the allegations in paragraphs 1 through 12 of its General Allegations, and in paragraphs 19 through 26, and incorporates them by reference as though fully set forth.

43. Volt breached the Contract and Agreement by, among other things, failing to perform work required by the Contract and by failing to complete the conduit distribution system within the time periods specified in the Contract and Agreement.

44. Stanford has performed all its obligations under the Contract and Agreement.

45. As a result of Volt's breaches of the Contract and Agreement Stanford has been damaged in an amount not yet fully known, but in any case not less than \$50,000.

WHEREFORE, Stanford prays for judgment against Volt, as set forth below.

SEVENTH CAUSE OF ACTION AGAINST TII AND BKF&A

DECLARATORY RELIEF

46. Stanford reasserts the allegation in paragraphs 1 through 14 of its General Allegations, and incorporates them by reference as although fully set forth.

47. In the Claim and in the Arbitration Demand Volt contends that among the reasons Stanford is indebted to Volt are that the design for the conduit distribution system furnished by TII and/or BKF&A was defective, and that the field directions provided by TII during the course of construction were defective.

48. Stanford is informed and believes and thereon alleges that an actual controversy exists between Stanford and defendants TII and BKF&A, in that Stanford contends, and TII and BKF&A deny the following:

(a) That, if Stanford is liable to Volt for Volt's damages as alleged in the Claim or Arbitration Demand, which Stanford denies, TII and/or BKF&A breached its obligation to furnish a proper design of the conduit

distribution system, and TII breached its obligation to provide proper field directions during the course of construction of the conduit distribution system.

(b) That, if Stanford is liable to Volt for its damages as alleged in the Claim or Arbitration Demand, which Stanford denies, TII and/or BKF&A is obligated to indemnify Stanford for all sums which Stanford pays or may be compelled to pay as a result of any damages, judgments or other awards recovered by Volt.

49. Stanford desires a judicial determination of the respective rights and duties of Stanford and of TII and BKF&A, and each of them, with respect to the sums allegedly owed in Volt's Claim or Arbitration Demand.

50. Such a declaration is necessary and appropriate at this time in order that Stanford may ascertain its rights and duties with respect to the claim of Volt for sums owed under the Contract. The claim of Volt and the claim of Stanford arise out of the same occurrence, and determination of both in one

proceeding is necessary and appropriate in order to avoid the circuitry and multiplicity of actions that would result if Stanford is required now to litigate the claims of Volt, and later to bring a separate action against TII and BKF&A for indemnification.

WHEREFORE, Stanford prays for judgment against TII and BKF&A, as follows:

PRAYER FOR RELIEF

FIRST CAUSE OF ACTION AGAINST VOLT:

1. For a judgment declaring: that the Agreement is a binding contract that continues to govern the rights and obligations of the parties; that the Agreement waived and released Volt's claims in the Claim and Arbitration Demand; and that Stanford is not indebted to Volt in any sum or sums whatever; and

2. For costs of suit and such other and further relief as the Court deems just.

SECOND CAUSE OF ACTION AGAINST VOLT:

1. For actual damages in the amount proven at trial;

2. For exemplary damages in the

amount allowed by the Court; and

3. For costs of suit and such other and further relief as the Court deems just.

THIRD CAUSE OF ACTION AGAINST VOLT:

1. For an order estopping Volt from repudiating the Agreement and giving full force and effect to the Agreement.

2. For costs of suit and such other and further relief as the Court deems just.

FOURTH CAUSE OF ACTION AGAINST VOLT:

1. For actual damages in the amount proven at trial;

2. For exemplary damages in the amount allowed by the Court; and

3. For costs of suit and such other and further relief as the Court deems just.

FIFTH CAUSE OF ACTION AGAINST VOLT:

1. For actual damages in the amount proven at trial;

2. For exemplary damages in the amount allowed by the Court; and

3. For costs of suit and such other and further relief as the Court deems just.

SIXTH CAUSE OF ACTION AGAINST VOLT

1. For actual damages in the amount proven at trial;
2. For costs of suit and such other and further relief as the Court deems just.

SEVENTH CAUSE OF ACTION AGAINST TII
AND BKF&A:

1. For a judgment declaring: that, if Stanford is held liable to Volt as alleged in Volt's Claim or Arbitration demand, which Stanford denies, TII and/or BKF&A breached its obligation to furnish a proper design of the conduit distribution system, and TII breached its obligation to provide proper field directions during the course of construction of the conduit distribution system; and that, if Stanford is liable to Volt for Volt's damages as alleged in the Claim or Arbitration Demand, which Stanford denies, TII and/or BKF&A is obligated to indemnify Stanford for all sums which Stanford pays or may be compelled to pay as a result of any damages, judgments or other awards recovered by Volt.

2. For costs of suit and such other
and further relief as the Court deems just.

Dated: September 3, 1986.

McCUTCHEN, DOYLE, BROWN & ENERSEN

By /s/ David M. Heilbron
David M. Heilbron
Attorneys for Plaintiff
The Board of Trustees of the
Leland Stanford Junior University

EXCERPTS FROM THE CONTRACT
BETWEEN THE PARTIES

(filed in Superior Court as
exhibit to Stanford's Complaint)

Contract Number: FC-3842
Project Number: 2240

CONSTRUCTION CONTRACT

CONDUIT DISTRIBUTION SYSTEM

(Lump Sum)

THIS CONTRACT, made and entered into as of the 10th day of July, 1984, by and between THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California, hereinafter referred to as the "Owner" and VOLT INFORMATION SCIENCES, INC., 2160 Venture Drive, Memphis, Tenn 38131 hereinafter referred to as the "Contractor," License No. 349954 C61.

4.1 WITNESSETH

RECITALS:

A. The Owner proposes to proceed with the construction of a communication conduit system hereinafter referred to as the "Project" or the "Work."

B. The Contractor desires to construct the work (as defined in Article 1.1.3 of the General Conditions) and represents to the Owner that he has fully familiarized himself with the Contract, has visited and carefully inspected the site and premises of the Work, and has fully satisfied himself concerning any and all existing conditions which might in any manner affect the Work.

NOW THEREFORE, Owner and Contractor, for and in consideration of their mutual promises and for other valuable consideration, the receipt whereof is hereby acknowledged, agree as set forth below.

4.2 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Contract, Conditions of the Contract (General, Supplementary and other Conditions), Detailed Drawings, Technical Specifications, all Addenda issued prior to execution of this Contract and all Modifications issued subsequent thereto. These form the Contract, and all are as fully a part of the Contract Documents as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Section 4.11.. If anything in the conditions of the contract is inconsistent with this Agreement, the Agreement shall govern.

4.3 CONTRACTOR'S AGREEMENT

The Contractor agrees to furnish all labor, materials, tools, supplies, equipment, transportation, supervision, technical, professional and other services; and shall perform all of the work required by the Contract Documents.

4.4 PROJECT MANGER/CONSTRUCTION MANAGER

The Project Manager is:

Terry Vernon
Old Pavilion
Stanford, California 94305

The Engineer is:

Brian, Kangas, Foulk Associates
595 Price Avenue
Redwood City, California 94063
(415) 365-0412

The Construction Manager is:

Bechtel
Don Hoppe
Old Pavilion
Stanford, California 94305
(415) 497-2655

The Consultant is:

Telecommunications International Inc.
Elbow Jones
Old Pavilion
Stanford, California 94305
(415) 497-0398
(619) 741-7752 Escondido, California

4.5 CONTRACTOR'S DUTIES AND STATUS

The Contractor accepts the relationship of trust and confidence established between him and the Owner by this Contract. Contractor covenants with the Owner to furnish his best skill and judgment characteristic of Contractors with expertise in performing the work, and to cooperate with the Project Manager and Engineer in furthering the interest of the Owner. Contractor agrees to furnish business administration and superintendence and to furnish at all times an adequate supply of workmen and materials. Contractor agrees to perform the work in the best and most soundest way and in the most expeditious and economical manner consistent with the interests of the Owner.

4.6 TIME OF COMMENCEMENT AND COMPLETION

* * *

4.7 FORCE MAJEURE

* * *

4.8 CONTRACT SUM

The Owner shall pay the Contractor for the performance of the Work, subject to additions and deductions by Change Order as provided in the Conditions of the Contract, in current funds, the Contract Sum of NINE HUNDRED SIX THOUSAND FIVE HUNDRED SIXTY SIX DOLLARS (\$906,566.00).

4.9 PAYMENTS

* * *

4.10 CHANGES IN THE WORK

The Owner may make changes in the work in accordance with Article 12 of the General Conditions.

4.11 MISCELLANEOUS PROVISIONS

Terms used in this Contract which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

The Contract Documents, which constitute the entire agreement between the Owner and the Contractor, are listed in Section 4.2 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

- a. Scope of Work;
- b. Instructions to Bidders;
- c. Bid dated July 10, 1984;
- d. This Contract;
- e. Construction Administration Procedures;
- f. General Conditions, AIA 1976 Edition;
- g. Supplementary General Conditions;
- h. Affirmative Action Special Conditions;
- i. Technical Specifications (by BKF&A, dated 9/21/83), as modified;
- j. Detailed Drawings CI, 2, 5, 10, 12, 14, 15, 19 to 36, 38 to 40;

It is mutually agreed that time is of the

essence of each and every portion of this Contract and of any requirements of the Contract whereby a definite and certain length of time is fixed for the performance of any act whatsoever; and, in the event an extension of time under the Contract is allowed for the completion of any work, the new time fixed by such extension shall be of the essence of this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in not fewer than triplicate as of the day and year first hereinabove written.

VOLT INFORMATION
SCIENCES, INC.

THE BOARD OF TRUSTEES
OF THE LELAND STANFORD
JUNIOR UNIVERSITY

By/s/ M Jennings

By/s/ William F. Massy
William F. Massy

Title: DIV. MGR.
(Contractor)

V.P. Bus. & Finance
(Owner)

I.R.S. Employer's I.D. or S.S.#
13-5658129

SCOPE OF WORK

1.1 General

Leland Stanford Junior University has embarked on a major project to upgrade most major elements of its electronic media facilities. This Electronic Communication Media (ECM) Project includes the following projects:

Replacement Telephone System Project #2239

Conduit Distribution System Project #2240

SUNet (Broad Band Data Network) Project #2015

Energy Management Control System Project #2014

New Telephone Building Project #2241

In order to allow an uninterrupted work flow, and proper scheduling of the major installations associated with the above projects, the Conduit Distribution facilities will be the initial phase of the work.

1.2 Scope

The work included in Project #2240, Conduit Installation Project, is the turnkey installation of a comprehensive conduit distribution system to serve the Stanford University community as defined in the Technical Specifications, the Detailed Drawings, and further detailed herein. The Contractor's area of responsibility includes all conduit, trenching, manholes, building entries, and service boxes.

1.3 Scheduling

In performing the work detailed herein, the Contractor shall be required, as a condition of

contract award, to perform all work in accordance with the scheduling requirements of Stanford University.

Priorities will be established for installation of specific conduit runs by Stanford. The Contractor shall perform the work in accordance with these priorities which are detailed in the Schedule of Installation, Appendix A.

Further, the Contractor should be fully aware that the scheduling is established for the convenience of Stanford, and may be changed at weekly project meetings, as needs of both parties dictate. Such changes shall invoke no penalties on Stanford University.

1.4 STANDARDS AND CODES

The Bidder will attach a copy of the Bidder's Installation Guidelines, and agree to meet these guidelines as a minimum standard during installation. Stanford reserves the right to modify these standards in order to ensure the integrity of any installation efforts. All work will meet the standards and codes described in the Technical Specifications attached to this document.

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA DOCUMENT A201

GENERAL CONDITIONS OF THE CONTRACT
FOR CONSTRUCTION

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES:
CONSULTATION WITH AN ATTORNEY IS ENCOURAGED
WITH RESPECT TO ITS MODIFICATION

1976 EDITION
TABLE OF ARTICLES

1. CONTRACT DOCUMENTS
2. ARCHITECT
3. OWNER
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7. MISCELLANEOUS PROVISIONS
8. TIME
9. PAYMENTS AND COMPLETION
10. PROTECTION OF PERSONS AND PROPERTY
11. INSURANCE
12. CHANGES IN THE WORK
13. UNCOVERING AND CORRECTION OF WORK
14. TERMINATION OF THE CONTRACT

This document has been approved and endorsed by
The Associated General Contractors of America

Copyright 1911, 1915, 1918, 1925, 1937, 1951,
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the American Institute of Architects, 1735
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laws of the United States and will be subject to
legal prosecution.

* * *

ARTICLE 4

CONTRACTOR

* * *

4.6 TAXES

4.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

* * *

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The Contract shall be governed by the law of the place where the Project is located.

* * *

7.9 ARBITRATION

7.9.1 All claims, disputes and other matters in question between the Contractor and the Owner arising out of, or relating to, the Contract Documents or the breach thereof, except as provided in Subparagraph 2.2.11 with respect to the Architect's decisions on matters relating to artistic effect, and except for claims which have been waived by the making or acceptance of final payment as provided by Subparagraphs 9.9.4 and 9.9.5, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. No arbitration

arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, the Architect, his employees or consultants except by written consent containing a specific reference to the Owner-Contractor Agreement and signed by the Architect, the Owner, the Contractor and any other person sought to be joined. No arbitration shall include, by consolidation, joinder or in any other manner, parties other than the Owner, the Contractor and any other persons substantially involved in a common question of fact or law, whose presence is required if complete relief is to be accorded in the arbitration. No person other than the Owner or Contractor shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. The foregoing agreement to arbitrate and any other agreement to arbitrate with an additional person or persons duly consented to by the parties to the Owner-Contractor Agreement shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

7.9.2 Notice of the demand for arbitration shall be filed in writing with the other party to the Owner-Contractor Agreement and with the American Arbitration Association, and a copy shall be filed with the Architect. The demand for arbitration shall be made within the time limits specified in Subparagraph 2.2.12 where applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings

based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.9.3 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any arbitration proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

* * *

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

* * *

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

SUPPLEMENTARY GENERAL CONDITIONS

* * *

Delete Paragraph 7.9.1. and substitute:

7.9 Arbitration

7.9.1 All claims, disputes and other matters in question between the parties to this contract, arising out of or relating to this contract or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then prevailing unless the parties mutually agreed [sic] otherwise. In any other arbitration, commenced or demanded pursuant to this Contract, then either party hereto, upon the written request of the other party, shall join in such other arbitrations and agree to the consolidation of the arbitrations. This agreement to arbitrate and to join and consolidate arbitrations shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

VOLT'S PETITION TO COMPEL
ARBITRATION

PETTIT & MARTIN
ROBERT B. THUM
DEANNE M. TULLY
101 California Street,
San Francisco, CA 94111
Telephone: (415) 434-4000

Attorneys for Defendant
VOLT INFORMATION SCIENCES, INC.

(ENDORSED)
F I L E D
OCT 7, 1986
GRACE K. YAMAKAWA
County Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

THE BOARD OF TRUSTEES)	
OF THE LELAND STANFORD)	
JUNIOR UNIVERSITY, a	)	No. P 48603
body having corporate)	
powers,	)	PETITION TO COMPEL
	)	ARBITRATION AND STAY
Plaintiff,	)	<u>ACTION</u>
)	
v.)	
)	
VOLT INFORMATION)	
SCIENCES, INC., TELE-)	
COMMUNICATIONS INTER-)	
NATIONAL, INC., BRIAN-)	
KANGAS-FOULK & ASSO-)	
CIATES, and DOES I)	
through XX, inclusive,)	
)	
Defendants.)	
)	

Defendant Volt Information Sciences,
Inc., alleges as follows:

1. Venue for this petition lies within the California Superior Court for the County of Santa Clara pursuant to California Code of Civil Procedure Section 1292.4.

2. On or about July 10, 1984, Volt Information Sciences, Inc. ("Volt") and Plaintiff The Board of Trustees of the Leland Stanford Junior University ("Stanford") entered into a written contract whereby Volt was to construct a Distribution Conduit System on the Stanford campus. This contract was the initial phase of an overall program to upgrade major components of campus electronic media facilities. The distribution conduit system would facilitate an overall integration of Stanford's many computer systems.

3. During the project numerous acts and omissions on the part of Stanford delayed and disrupted Volt's performance and significantly increased the cost of and time required for completion of Volt's work. Accordingly, on or about April 14, 1986, Volt submitted to Stanford a claim for additional compensation in the

amount of \$3,916,190 plus interest. On or about August 27, 1986, this claim was denied in full.

4. Paragraph 7.9.1 of the general conditions, a part of the contract, provides for the arbitration of all claims arising out of or relating to the contract of the breach thereof.

5. On or about August 27, 1986, Volt filed a demand for arbitration with the American Arbitration Association ("AAA") and demanded that Stanford submit such controversy to arbitration as agreed. Due to the magnitude and complexity of this particular dispute, the Regional Director of the AAA provided Volt and Stanford with a "blue ribbon" list of potential arbitrators including attorneys, engineers and architects recognized as experts in construction. Selection of the arbitration panel was underway when Stanford served Volt with its complaint in this action.

6. On or about September 4, 1986, Stanford filed a complaint in this court against Volt, Telecommunications International, Inc. ("TII") and Brian, Kangas, Foulk and Associates

("BK&F"). TII was Stanford's engineering consultant on the project and prepared the drawings and specifications for the conduit distribution system. TII contracted with BK&F as a subconsultant for the preparation of the drawings and specifications. Neither such defendant is a party to the arbitration agreement.

7. Stanford and Volt agree that the entire dispute between them, including the breach of contract and tort claims in Stanford's lawsuit and Volt's claims currently pending before the AAA, is properly subject to arbitration. Nonetheless Stanford refuses to submit to arbitration on the sole ground that the presence of additional defendants who are not parties to the arbitration agreement requires all parties to litigate their claims pursuant to Section 1281.2(c) of the California Code of Civil Procedure.

8. This petition is filed on the grounds that under both the Federal Arbitration Act, 9 U.S.C. Section 1, et seq., and the California

Arbitration Act, Code of Civil Procedure Section 1280, et seq., the Court must compel Stanford to arbitrate its claims against Volt. Stanford has filed its lawsuit against TII and BK&F solely to invoke the provisions of Section 1281.2(c). Stanford's claims against the third party defendants for indemnity are not yet ripe. Stanford has used the artifice of this lawsuit in an attempt to defeat a valid arbitration provision with Volt.

WHEREFORE, Volt prays:

1. That the Court order Stanford to arbitrate all controversies as herein alleged;
2. That the Court order the above-entitled action be stayed in its entirety until the petition to compel is determined and arbitration is concluded if ordered therein;
3. For costs of suit herein incurred; and

4. For such other and further relief as
the Court may deem proper.

DATED: October 6, 1986.

PETTIT & MARTIN

By /s/ Robert B. Thum
Robert B. Thum
Attorneys for Defendant
VOLT INFORMATION SCIENCES,
INC.

VOLT'S DEMAND FOR ARBITRATION

(filed in Superior Court as
exhibit to Volt's petition
to compel arbitration)

American Arbitration Association
CONSTRUCTION INDUSTRY ARBITRATION RULES
Demand for Arbitration

Date: August 27, 1986

To (Name): Board of Trustees of Leland
Stanford Junior University
(Address) The Old Pavillion
(City and State) Stanford, California 94305
(Telephone) (415) 723-9611
Attn: Facilities Project Management

Named claimant, a party to the arbitration agreement contained in a written contract, dated July 10, 1984 providing for arbitration under the Construction Industry Arbitration Rules, hereby demands arbitration thereunder.

(attach arbitration clause or quote hereunder)

see Exhibit A

NATURE OF DISPUTE

see Exhibit B

CLAIM OR RELIEF SOUGHT: (amount, if any)

Monetary damages in the amount of at least \$3,916,190, together with interest at the maximum rate permitted by law.

A three-arbitrator panel is requested.
Please indicate industry category for each party.
Claimant:

☐ Owner ☐ Architect ☐ Engineer ☒ Contractor
☐ Subcontractor, Specify ☐ Other ☐

Respondent:

☒ Owner ☐ Architect ☐ Engineer ☐ Contractor
☐ Subcontractor, Specify ☐ Other ☐

Hearing Locale Requested San Francisco, CA
City and State

You are hereby notified that copies of our Arbitration Agreement and of this Demand are being filed with the American Arbitration Association at its San Francisco Regional Office with the request that it commence the administration of the arbitration. Under Section 7 of the Arbitration Rules, you may file an answering statement within seven days after notice from the Administrator.

Signed /s/ Robert B. Thum Title Attorney

Name of Claimant	<u>Volt Information Sciences, Inc.</u>
Address	<u>101 Park Avenue</u>
City and State	<u>New York, N.Y.</u> Zip Code <u>10178</u>
Telephone	<u>(212) 309-0200</u>
Name of Attorney	<u>Pettit & Martin, Attn.</u> <u>Robert B. Thum</u>
Address	<u>101 California Street, 35th Floor</u>
City and State	<u>San Francisco, CA 94111</u>
Telephone	<u>(415) 434-4000</u>

Exhibit A

Paragraph 7.9.1, General Conditions:

All claims, disputes and other matters in question between the parties to this contract, arising out of or relating to this contract or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then prevailing unless the parties mutually agreed otherwise. In any other arbitration, commenced or demanded pursuant to this Contract, then either party hereto, upon the written request of the other party, shall join in such other arbitrations and agree to the consolidation of the arbitrations.

This agreement to arbitrate and to join and consolidate arbitrations shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

Exhibit B

Breach of Contract FC 3842, dated July 10, 1984, by and between Volt Information Sciences, Inc. ("Volt") and the Board of Trustees of Leland Stanford Junior University ("Stanford"), providing for the construction of the Distribution Conduit System, Project 2240. Under the Contract, Volt was to supply labor, materials, and equipment to construct the work shown on Stanford's plans and specifications, including site preparation, 24,000 linear feet of trench, 162,000 duct feet of PVC conduit, 25 manholes, 15 service boxes, building entry boxes, and surface restoration. Volt had no design or engineering responsibilities under the Contract.

During the project, numerous acts and omissions on the part of Stanford and its representatives delayed, disrupted and interfered with Volt's performance and significantly increased the cost of and time required for completion of its work. Those acts are the subject of this demand for arbitration, and include without limitation:

- The furnishing of a design (including field directions) so defective and unsuitable that (a) a large portion of the duct banks failed and had to be repaired or replaced; (b) virtually all of the prescribed running lines had to be re-engineered in the field; and (c) a significant number of changes were issued to Volt correcting design errors, adding substantial amounts of new work, and deleting/modifying old work.

- Pervasive interferences and delays to field performance, including the usurpation of Volt's right to control the specific manner and disposition of its forces and the precise sequence of its construction activities; the unilateral direction to increase man-loading and equipment-loading; constructive and express orders to accelerate; and the abandonment of contractually-prescribed chains of authority and lines of communication.

- Improper contract administration, including refusals to grant appropriate time extension requests; refusals to grant appropriate change order requests; the abridgment of Volt's right to plan and control the conduct of its work; the wrongful termination of Volt on account of fundamental design defects and errors for which Stanford was itself responsible; the imposition of unreasonable and punitive performance and other requirements as a part of rescinding the wrongful termination; and the unexcused failure, for over one year, to pay progress, change order, and retention billings plainly due under the Contract.

The project Stanford required Volt to perform was not the same project set forth in the bidding documents or plans and specifications. The entire character of the work was altered. Stanford abandoned the original project and instead imposed on Volt performance requirements that neither Volt nor any other reasonable contractor could have anticipated. Stanford abrogated its contractual responsibilities and materially breached the Contract.

AFFIDAVIT OF EUGENE CURRAN

(filed in Superior Court
as attachment to Volt's
Petition to Compel Arbitration)

PETTIT & MARTIN
ROBERT B. THUM
DEANNE M. TULLY
101 California Street,
San Francisco, CA 94111
Telephone: (415) 434-4000

(ENDORSED)
F I L E D
OCT 7, 1986
GRACE YAMAKAWA
COUNTY CLERK

Attorneys for Defendant
VOLT INFORMATION SCIENCES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

THE BOARD OF TRUSTEES)	
OF THE LELAND STANFORD)	
JUNIOR UNIVERSITY, a	)	No. P 48603
body having corporate)	
powers,	)	AFFIDAVIT OF EUGENE
	)	CURRAN IN SUPPORT OF
Plaintiff,	)	VOLT INFORMATION
	)	SCIENCES, INC.'S
v.	)	PETITION TO COMPEL
	)	ARBITRATION AND STAY
VOLT INFORMATION	)	LEGAL ACTION
SCIENCES, INC., TELE-)	
COMMUNICATIONS INTER-	)	Date: November 4, 1986
NATIONAL, INC., BRIAN-	)	Time: 9:30 a.m.
KANGAS-FOULK & ASSO-	)	Dept. 2
CIATES, and DOES I	)	Judge Gordon
through XX, inclusive,)	
)	
Defendants.)	
)	

STATE OF NEW YORK)
) SS.
COUNTY OF NEW YORK)

Eugene F. Curran , being duly sworn,
deposes and says:

I am assistant Vice President and
Comptroller for the Voltelcon Division of Volt
Information Sciences, Inc. ("Volt"). I
participated in the management of the
Distribution Conduit System construction project
("Project") in Stanford, California. I have
personal knowledge of the following information:

1. Volt is a New York corporation and
maintains its principal place of business in New
York, New York;

2. The Project Manager and senior field
personnel on the Project were transferred from
Tennessee, Georgia, Florida, Colorado and New
York to the jobsite in California;

3. In order to meet contractual
obligations a significant portion of the work
crews on the Project were transferred from
Colorado and Florida to the jobsite in California;

4. In order to perform work on the Project, Volt procured goods and materials such as conduits and spacers from states other than California and transported those goods and material to California for use on the Project;

5. In order to perform work on the Project, Volt transferred equipment such as backhoes, trenchers, compressors and trucks from Tennessee, Colorado and Florida;

6. Administration and management of the Project including the payroll for the Project was conducted in Tennessee;

7. Volt's overall accounting records for the Project were maintained in Garden City, New York; and

8. Volt's corporate general management was also conducted in New York, New York.

I have read the foregoing affidavit and know it to be true of my own knowledge, except the matters that are stated in it on my information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury that
the foregoing is true and correct.

Executed this 2nd Day of October, 1986,
at New York, New York.

/s/ Eugene F. Curran
Eugene F. Curran

Subscribed and sworn to before me, a
Notary Public in and for the State of
New York.

/s/ John H. Pavlika

John H. Pavlika
Notary Public State of
New York
No. 41-8300105 -
Queens County

My commission expires: 12/31/88

ORDER OF THE SUPERIOR
COURT DENYING APPELLANT'S
PETITION TO COMPEL ARBITRATION

Filed
Nov. 21, 1986
Grace Yamakawa
County Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

BOARD OF TRUSTEES OF THE LELAND)	
STANFORD JUNIOR UNIVERSITY, a)	
body having corporate powers,)	No. P48603
)	
Plaintiff,)	
)	ORDER
v.)	
)	
VOLT INFORMATION SCIENCES,)	
INC., TELECOMMUNICATIONS)	
INTERNATIONAL, INC., BRIAN-)	
KANGAS-FOULK & ASSOCIATES, and)	
DOES I THROUGH XX, inclusive,)	
)	
Defendants.)	
_____)	

Plaintiff's motion to stay arbitration is granted and defendant's motion to compel arbitration is denied. The court believes that the principals [sic] enunciated in Garden Grove Community Church vs. Pittsburgh-Des Moines Steel Co., 140 Cal.App.3d 251 and Prestressed Concrete, Inc. v. Adolphson & Peterson, Inc., 240 N.W.2d 551, as well as California Code of Civil Procedure §1281.2(c) apply in this case.

DATED: November 21, 1986

/s/ Charles Gordon
CHARLES GORDON
Judge of the Superior Court

OPINION OF THE CALIFORNIA
COURT OF APPEAL FOR
THE SIXTH APPELLATE DISTRICT

CERTIFIED FOR PUBLICATION

SEE DISSENTING OPINION

FILED
October 5, 1987
Richard J. Eyman,
Clerk

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

BOARD OF TRUSTEES)	
OF LELAND STANFORD)	
JUNIOR UNIVERSITY,)	
Plaintiff-Respondent,	)	No. H002634
)	
vs.	)	(Santa Clara
	)	County Super.
VOLT INFORMATION	)	Court P48603)
SCIENCES, INC.,)	
Defendant-Appellant.)	
)	

The Board of Trustees of the Leland Stanford Junior University (Stanford) and Volt Information Sciences, Inc. (Volt) are parties to a written contract under which Volt was to construct a system of electrical conduits throughout the Stanford campus. The contract contains an agreement to arbitrate any disputes arising therefrom. It also contains this language: "The contract shall be governed by the law of the

place where the project is located."

A dispute developed regarding compensation for additional work. Volt submitted a claim which Stanford refused to pay; whereupon Volt served on Stanford a formal demand for arbitration of its claim. Approximately a week later Stanford filed suit in Superior Court. The complaint alleged fraud and breach of contract, inter alia, against Volt and in addition sought indemnity from two companies involved in the design and management of the project. Stanford did not have arbitration agreements with these two firms.

Volt then filed a petition to compel arbitration and to stay prosecution of the lawsuit. Stanford responded with a motion to stay the arbitration pursuant to the terms of Code of Civil Procedure section 1281.2, subdivision (c), 1/ on the ground that a lawsuit

1/ "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it (contd.)

was pending involving defendants not bound by the arbitration agreement. The court denied Volt's petition and granted Stanford's motion under authority of section 1281.2. Volt appeals from that ruling.

The parties agree that their contract involves interstate commerce, and that, generally, the Federal Arbitration Act (the FAA) governs contracts in interstate commerce. There is no provision in the FAA corresponding to Code of Civil Procedure section 1281.2, subdivision (c) which would allow a court to stay arbitration when third parties not subject to arbitration are

(footnote contd.) determines that an agreement to arbitrate the controversy exists, unless it determines that: ... [] (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common question of law or fact. ... [] If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party as set forth under subdivision (c) herein, the court ... (4) may stay arbitration pending the outcome of the court action or special proceeding."

involved in the dispute; thus it is apparent that were the federal rules to apply, Volt's petition to compel arbitration would have to be granted. On the other hand, Stanford and Volt have agreed, as we interpret their choice of law provision, that the laws of California, of which section 1281.2 is certainly a part, are to govern their contract. It is Stanford's position that enforcement of the arbitration agreement in accordance with the chosen California rules of procedure does not create a conflict with the federal act, since the purpose of the Act was to ensure that private agreements to arbitrate are enforceable contracts. Moreover, application of the federal rules in this case would force the parties to arbitrate in a manner contrary to their agreement. On balance it is this last point we find persuasive. Accordingly we will affirm the trial court's ruling.

I.

We start with the well-established principle that the interpretation of a written agreement

is a legal question unless the interpretation turns upon the credibility of extrinsic evidence. (Estate of Dodge (1971) 6 Cal.3d 311, 318.) There was no extrinsic evidence here and thus no issue of fact. Consequently we are not bound by the trial court's construction but must reach our own determination of the meaning of this provision. (Rooney v. Vermont Investment Corp. (1973) 10 Cal.3d 351, 372.) In this case we agree with the trial judge that by choosing "the law of the place where the project is located," the parties chose to be governed by California law.

The quoted words are a standard choice of law provision contained in an American Institute of Architects document entitled "General Conditions of the Contract for Construction," 2/ intended for use by contracting parties across the nation. It is therefore not remarkable that the particular site of the project in question is not named. We have no doubt that the word "place" was intended to mean the forum state.

2/ AIA Document A201, § 7.1.1.

Courts in other states faced with this identical language have reached the same conclusion we do here. (Lane-Tahoe, Inc. v. Kindred Construction Company (Nev. 1975) 536 P.2d 491, 493; Eric A. Calstrom Construction v. Independent Sch. Dist. (Minn. 1977) 256 N.W.2d 479, 483; Standard Co., etc. v. Elliott Const. Co., Inc. (La. 1978) 363 So.2d 671.) Likewise, in the California case of Garden Grove Community Church v. Pittsburgh-Des Moines Steel Co. (1983) 140 Cal.App.3d 251, handed down the year before the Stanford-Volt agreement was forged, parties to a construction contract agreed to be governed by the law of the construction site, which the court took to mean California.

We do not find reasonable Volt's interpretation that the "place" where the project is located be construed to mean not only the state of California but also the nation of the United States of America. The question whether the Federal Arbitration Act nonetheless applies by virtue of the fact that the contract is one in interstate commerce is another matter,

to which we turn next.

II.

Volt argues even if the choice of law provision is taken to mean that California law shall govern, the supremacy clause of the United States Constitution operates to preempt California law because the contract is in interstate commerce . The parties' choice of law insofar as it results in direct conflict with federal law under the provisions of the FAA would thus be rendered void and the federal rule would prevail.

We cannot countenance such a result. At the outset, it is by no means entirely clear that the parties cannot choose to arbitrate under the state rather than the federal statutory scheme. The court in Garden Grove considered this question. "The Federal Arbitration Act by its terms applies to all commercial agreements involving interstate commerce; thus, on the face of it, it would appear federal law controls. However, in this case the parties agreed by contract to be governed by the law of the

construction site, California. While California courts have held the Federal Arbitration Act (FAA) applies to California cases involving contracts of interstate commerce, we have not found any cases applying it where the parties committed to be governed by state law. In the face of such a choice of laws provision, California law applies unless preempted by the FAA." (Garden Grove Community Church v. Pittsburgh-Des Moines Steel Co., supra, 140 Cal.App.3d at p. 262.)

State law is preempted only to the extent that it stands as an obstacle to the accomplishment of the aims of the federal enactment. (Perez v. Campbell (1971) 402 U.S. 637, 644; Waysl, Inc. v. First Boston Corp. (9th Cir. 1987) 813 F.2d 1579.) The FAA was intended to "revers[e] centuries of judicial hostility to arbitration agreements." (Scherk v. Alberto-Culver Co. (1974) 417 U.S. 506, 510 [94 S.Ct. 2449, 2453].) The purpose behind its passage was "to ensure judicial enforcement of privately made agreements to arbitrate. ... The

Act ... does not mandate the arbitration of all claims, but merely the enforcement - upon the motion of one of the parties - of privately made arbitration agreements. ... [I]ts purpose was to place an arbitration agreement 'upon the same footing as other contracts, where it belongs,' ..." (Dean Witter Reynolds, Inc. v. Byrd (1985) 470 U.S. 213, 219 [105 S.Ct. 1238, 1242].)

Bearing this in mind there is little doubt that the FAA preempts state common law under which arbitration agreements are unenforceable. (See, e.g., Episcopal Housing Corp. v. Federal Ins. Co., (S.C. 1977) 239 S.E.2d 647.) It is equally apparent that state statutes which bar the enforcement of arbitration agreements in particular areas of the law must give way to the federal policy. Thus in two recent United States Supreme Court cases 3/ California's Franchise Investment Law (Corp. Code, § 31512),

3/ Southland Corp. v. Keating 465 U.S. 1 (1984) and Perry v. Thomas (1987) 482 U.S. ___, [96 L.Ed.2d 426].

and Labor Code section 229, respectively, both of which allow for a judicial forum notwithstanding a valid arbitration agreement, were held to be preempted by the FAA.

It does not follow, however, that the federal law has preclusive effect in a case where the parties have chosen in their agreement to abide by state rules. In fact it would appear that the federal law mandates enforcement of such an agreement according to its terms, since the recognized aim of the Act was to make arbitration agreements "as enforceable as other contracts." (Prima Paint v. Flood & Conklin (1967) 388 U.S. 395, 404, fn. 12.)

The thrust of the federal law is that arbitration is strictly a matter of contract. In this California law is entirely in accord: "Arbitration is ... a matter of contract, and the parties may freely delineate the area of its application." (O'Malley v. Wilshire Oil Co. (1963) 59 Cal.2d 482, 490.) Since "[t]he 'Act does not dictate that we should disregard parties' contractual agreements ... outlining

the boundaries of the areas intended to be arbitrable"" (Chan v. Drexel Burnham Lambert, Inc. (1986) 178 Cal.App.3d 632, 640), it follows that the parties are at liberty to choose the terms under which they will arbitrate, and such a choice will not run afoul of the FAA. Stated another way, the Act does not operate to require the parties to submit to arbitration any dispute which they have not agreed so to submit. (AT&T Tech., Inc. v. Communications Workers (1986) ___ U.S. ___, [106 S.Ct. 1415, 1418].)

If the parties here had expressly stated in their agreement that they wished to arbitrate only those disputes between themselves which did not involve third parties not bound by the arbitration agreement, this provision would presumably be enforceable. In our view they accomplished the same thing by choosing to be governed by California law, thus incorporating the California rules of civil procedure governing arbitration agreements.

Were the federal rules to be imposed in this case to override the parties' choice of

law, the effect would be to force the parties to arbitrate where they agreed not to arbitrate. This result is not only inimical to the policies underlying state and federal arbitration law as expressed above, it also violates basic principles of contract law. Since contractual terms are rarely agreed to without reason, it is assumed that no part of an agreement is superfluous or without effect, but that each term was bargained for. (Rest. Contracts 2d. § 203.) Where a party is deprived of a benefit of his bargain by the operation of law, that party is excused from his duty to perform. (Rest. Contracts §§ 458, 463, 464; 6 Corbin, Contracts (1962) Discharge by Failure of Consideration Either Existing or Prospective, § 1255; 1 Witkin, Summary of Cal. Law (8th ed.) Contracts, Frustration of Purpose § 612, Operation of Law § 607.) Thus even if we were to decide, which we do not, that federal law preempted here, Stanford would be entitled to raise this defense to further performance under the arbitration agreement.

III.

Shortly before oral argument in this matter the case of Liddington v. The Energy Group, Inc. (1987) 192 Cal.App.3d 1520 was decided by the First District. That case involved a service contract in interstate commerce containing both an arbitration agreement and also a choice of law provision designating California to be the forum state. The contract further provided that the parties "'shall be deemed to have agreed to binding arbitration in the State of California ...'" (Id., at p. 1523, fn. 3.) When the Liddingtons were sued by a bank for default on a promissory note, they cross-complained against The Energy Group, assignee of the service contract, for failure to install energy systems financed by the bank. The Energy Group then filed a petition to compel arbitration pursuant to the arbitration clause. The trial court stayed arbitration pending the resolution of the litigation, on the basis of Code of Civil Procedure section 1281.2, subdivision (c). On appeal The Energy Group argued that Code of

Civil Procedure section 1281.2 was preempted to the extent it was used to stay arbitration proceedings governed by the FAA. The Court of Appeal agreed and reversed.

Despite the striking similarity between this case and ours, we conclude that the precise question before us was not decided in Liddington. The analysis in Liddington approached the preemption issue from the standpoint of whether the state law in question was a general principle applicable to all contracts, or a rule pertaining exclusively to arbitration contracts. If it was the latter, it would be preempted by the rules contained in the FAA to the extent that they conflicted. In reaching its decision that section 1281.2 fell into this category, the Liddington court relied upon a footnote in the United States Supreme Court case of Perry v. Thomas, supra, 482 U.S. ____ [96 L.Ed.2d 426, 437] decided only two weeks earlier. In footnote nine in that case the court said this: "Thus state law, whether of legislative or judicial origin, is

applicable if that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally. A state law principle that takes its meaning precisely from the fact that a contract to arbitrate is at issue does not comport with this requirement"

In Perry the court was faced on the one hand with a private agreement to arbitrate according to state law, and on the other with a state law expressly providing for a judicial forum in spite of the arbitration agreement. State policy was therefore directly at loggerheads with the purposes behind the FAA, and the federal law prevailed to enforce the private agreement. In our case the issue is not whether the state law is one directly affecting the enforceability of arbitration agreements, but rather whether the federal rules can be applied to compel parties to arbitrate contrary to the choice of law in their agreement. Neither Perry nor Liddington addresses this question.

Nor do we find the cases of Moses H. Cone Hospital v. Mercury Constr. Corp. (1983) 460 U.S. 1 [103 S.Ct. 927] or Dean Witter Reynolds, Inc. v. Byrd (1985) 470 U.S. 213 [105 S.Ct. 1238], relied upon by Volt, to be on point here. Both of these cases arose in the context of competing claims in federal and state courts. Neither concerned the enforceability of a contractual choice of law provision.

IV.

As an additional ground for appeal Volt contends that even if California law were to apply, section 1281.2, subdivision (c) cannot be construed to authorize a stay under the circumstances presented here. Volt argues that application of the statute where Stanford has brought the separate action as a "reactive" response to the demand for arbitration, would amount to giving license to a party to avoid its obligations under an arbitration agreement by simply filing a lawsuit against the party seeking arbitration and joining others not part of the agreement.

As Volt concedes, the language of section 1281.2 is sufficiently broad to encompass the present procedural posture. Moreover the statute does not provide for a stay in every case in which the moving party has filed a separate lawsuit, but rather gives the court discretion to make such a ruling in an appropriate case.

It is well known that a court of review will not reverse a discretionary ruling in the absence of a clear abuse of discretion.

(Barajas v. USA Petroleum Corp. (1986) 184 Cal.App.3d 974, 989.)

The guidelines for the exercise of discretion here are set forth in the statute itself. The court may grant the stay if it determines that there is a pending court action involving a third party "arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings of law or fact."

Volt claims there is no evidence establishing common issues of law or fact since

its demand for arbitration concerned a claim for payment of additional compensation against Stanford alone. In the body of the demand, however, Volt has stated that the changes and additional work it was required to perform were due to a "defective and unsuitable" design and "improper contract administration." Volt does not dispute that the two companies named by Stanford in its complaint were instrumental in the design and management of the project.

Stanford has not merely asserted ancillary claims against unnamed Does in its lawsuit, as was the case in Bos Material Handling, Inc. v. Crown Controls Corp. (1982) 137 Cal.App.3d 99. In that case the court found that this was insufficient to show a third party claim which would create "a possibility of conflicting rulings on a common issue of law or fact." (Code Civ. Proc., § 1281.2, subd. (c).) Rather Stanford has named two parties both closely involved in the management and design of the project, who conceivably could play a role in the present dispute. The possibility of

conflicting rulings is readily apparent. Under the circumstances we need go no further than to say we find no abuse of discretion.

The order of the trial court is affirmed.

Brauer, J.

I concur:

Agliano, P.J.

CAPACCIOLI, J., dissenting:

I respectfully dissent. I find that the majority's analysis is flawed because it is based upon an erroneous premise, namely that the parties chose California arbitration law over federal law by agreeing that the contract would be "... governed by the law of the place where the project is located."

Analytically, it makes no difference in this case whether California and the United States or California alone is the "place." There can be no conflict between federal and state law because a state law is void to the extent it conflicts with federal law under the Supremacy Clause of the United States Constitution and all the states in our republic are bound by the same federal law. (U.S. Const., art. 6, cl. 2; Maryland v. Louisiana (1981) 451 U.S. 725, 746-47 [68 L.Ed.2d 576, 595-96]; Perez v. Campbell (1971) 402 U.S. 637, 649 [29 L.Ed.2d 233, 242].) The Supremacy Clause of the United States Constitution provides: "The Constitution,

and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." (U.S. Const., art. 6, cl. 2.)

California's Constitution as well as the U.S. Constitution establishes that federal law is paramount: "The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land." (Cal. Const., art. 3, § 1.) Furthermore, the California Supreme Court has held that the California courts have a nondiscretionary duty to enforce federal law where they have concurrent jurisdiction. (Gerry of California v. Superior Court (1948) 32 Cal.2d 119, 122; Brown v. Pitchess (1975) 13 Cal.3d 518, 523.) Thus, under California law, federal law governs matters cognizable in California upon which the United States has definitively spoken.

Thus, the parties' choice of law provision, even assuming arguendo that it must be interpreted as an agreement to have California law govern, does not invariably lead to the conclusion that federal law is inapplicable. To the contrary, where federal law is supreme, California law mandates that federal law controls.

The Federal Arbitration Act requires state and federal courts to enforce any arbitration agreement contained in a contract "evidencing a transaction involving commerce" "... save upon such grounds as exist at law and equity for the revocation of any contract." (See 9 U.S.C., § 2; see Perry v. Thomas (1987) 482 U.S. ____ [96 L.Ed.2d 426, 435-37]; Dean Witter Reynolds, Inc. v. Byrd (1985) 470 U.S. 213, 215-17 [84 L.Ed.2d 158, 161-63, 165]; Southland Corp. v. Keating 1984) 465 U.S. 1, 10-16 [79 L.Ed.2d 1, 12-16].) To the extent California law permits a court to deny or stay arbitration in the face of an unqualified agreement to arbitrate, that law is preempted by the Federal Arbitration Act where a

contract "evidencing a transaction involving commerce" is concerned. (Liddington v. The Energy Group, Inc. (1987) 192 Cal.App.3d 1520, 1525-29; see Perez v. Campbell, supra, 402 U.S. at pp. 644, 649 [29 L.Ed.2d 233, 239, 244]; cf. Perry v. Thomas, supra; Southland Corp. v. Keating, supra.)

While I agree with the majority that the Federal Arbitration Act does not preclude parties from contractually limiting the scope of their arbitration agreement (see Seaboard Coast Line R. Co. v. Trailer Train Co. (1982) 690 F.2d 1343, 1348, 1352; Davis v. Chevy Chase Financial Ltd. (1981) 667 F.2d 160, 165; Alabama Ed. Ass'n. v. Alabama Prof. Staff Organ. (1981) 655 F.2d 607; Lounge-A-Round v. GCM Mills, Inc. (1980) 109 Cal.App.3d 190, 195; cf. United Steelworkers v. Warrior & Gulf Co. (1960) 363 U.S. 574 [4 L.Ed.2d 1409]), the mere choice of California law is not a selection of California law over federal law and does not in any way limit an otherwise unqualified agreement to arbitrate.

The majority concedes that Volt's petition to compel arbitration would have to be granted if the federal law applied. I think there is no doubt that it does.

I would reverse and remand.

Capaccioli, J.

ORDER OF THE CALIFORNIA
SUPREME COURT DENYING
VOLT'S PETITION FOR REVIEW

Filed
Dec. 17, 1987
Lawrence P. Gill,
Clerk

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL
6th District, No. H002634

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN BANK

BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR UNIVERSITY, Respondent

v.

VOLT INFORM. SCIENCES, INC., Appellant

Appellant's petition for review DENIED.

The Reporter of Decisions is directed not to publish in the Official Appellate Reports the opinion in the above-entitled appeal filed October 5, 1987, which appears at 195 Cal.App.3d 349. (Cal. Const., Art. VI, sec. 14; Rule 976, Cal. Rules of Court.)

/s/ Malcolm Lucas
Chief Justice